



AGENDA

CANBY CITY COUNCIL REGULAR MEETING

October 5, 2011

7:30 PM

Council Chambers
155 NW 2nd Avenue

Mayor Randy Carson

Council President Walt Daniels
Councilor Richard Ares
Councilor Tim Dale

Councilor Traci Hensley
Councilor Brian Hodson
Councilor Greg Parker

CITY COUNCIL REGULAR MEETING

1. **CALL TO ORDER – 6:30 PM** – City Hall Conference Room – The Council will immediately go into Executive Session with the Regular Session following at 7:30 PM in the Council Chambers.
2. **EXECUTIVE SESSION: ORS 192.660(2)(h) Pending Litigation**
3. **OPENING CEREMONIES (7:30 PM - Council Chambers)**
 - A. Pledge of Allegiance and Moment of Silence
4. **COMMUNICATIONS**
5. **CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS**

(This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Each citizen will be given 3 minutes to give testimony. Citizens are first required to fill out a testimony/comment card prior to speaking and hand it to the City Recorder. These forms are available by the sign-in podium. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter.)
6. **MAYOR'S BUSINESS**
7. **COUNCILOR COMMENTS & LIAISON REPORTS**
8. **CONSENT AGENDA**

(This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may be discussed if it is pulled from the consent agenda to New Business.)

 - A. Approval of Minutes of the September 21, 2011 City Council Work Session & Regular Meeting
9. **RESOLUTIONS & ORDINANCES**
 - A. Ord. 1347, Amending the Cable Television Franchise Agreement Between the City of Canby and WaveDivision VII, LLC Pg. 1
 - B. Ord. 1349, Amending the Cable Television Franchise Agreement Between the City of Canby and Canby Telephone Association Pg. 6

- 10. NEW BUSINESS**
- 11. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS**
- 12. CITIZEN INPUT**
- 13. ACTION REVIEW**
- 14. EXECUTIVE SESSION: ORS 192.660(2)(h) Pending Litigation**
- 15. ADJOURN**

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer at 503.266.4021 ext. 233. A copy of this Agenda can be found on the City's web page at www.ci.canby.or.us. City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503.263.6287.

ORDINANCE NO. 1347

AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF CANBY AND WAVEDIVISION VII, LLC AND DECLARING AN EMERGENCY.

WHEREAS, on April 8, 1999, the City of Canby granted a twelve year franchise to North Willamette Telecom, effective May 7, 1999 (the “Franchise”). The Franchise was subsequently assigned to Willamette Broadband, LLC in 2001, and the City approved the transfer to WaveDivision VII, LLC, a Washington limited liability company, doing business as Wave Broadband (“Wave”) in 2007; and

WHEREAS, the Franchise was to expire on May 7, 2011, and the parties agreed to extend the term through June 6, 2011, to allow additional time to reach agreement on a longer term extension of the agreement; and

WHEREAS, the City and Wave did not intend to allow the franchise to expire without extension, but the City inadvertently did not extend the Franchise while discussions about the longer term extension continued; and

WHEREAS, the City and Wave have agreed to extend the term of the Franchise to expire on March 4, 2017, which is consistent with the expiration date of the cable franchise agreement the City granted to a competitive cable service provider in the City, Canby Telephone Association; and

WHEREAS, the City and Wave have agreed to amend the Franchise to reflect the new expiration date and to address several other issues; and

WHEREAS, the City finds it is in the public interest to amend the Franchise as set forth in this Ordinance, and that such amendment be effective as of June 6, 2011, to ensure that Wave has a continuous franchise from the City; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City of Canby hereby amends the Franchise with Wave as follows, with all other provisions, terms and conditions of the Franchise remaining unchanged and in full force and effect except as expressly stated herein:

- A. All references in the Franchise to “Grantee,” “Franchisee,” or “North Willamette Telecom” shall mean WaveDivision VII, LLC.

- B. Section 1.1 of the Franchise shall read as follows: “The City of Canby, Oregon (hereafter Grantor) is authorized to and by this Franchise agreement does grant to WaveDivision VII, LLC (hereafter Grantee) a nonexclusive Franchise through March 4, 2017, revocable as provided herein, to construct, operate and maintain a cable communications system in the City.”
- C. The phrase “for a 12-year period” shall be deleted from the first sentence of Section 3.1 of the Franchise.
- D. The first sentence of the first paragraph of Section 3.3 of the Franchise shall be deleted in its entirety and replaced with the following: “Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be through March 4, 2017, at which time the franchise shall expire and be of no force and effect.”
- E. The phrase “twelve (12) year” shall be deleted from the first sentence of the second paragraph and from the last sentence of the last paragraph of Section 3.3 of the Franchise.
- F. The phrase “and continuing throughout its term,” shall be deleted from the first sentence of Section 6.5(c) (i) of the Franchise. After the first sentence of Section 6.5(c)(i), the following sentence shall be added: “No sooner than November 1, 2011, Grantee shall provide two percent (2%) of its gross revenues as support for PEG access capital costs. Grantee shall provide two percent (2%) of its gross revenues through October 31, 2013. Commencing on November 1, 2013 and through the remaining term of the Franchise, Grantee shall provide one-percent (1%) of its gross revenues as support for PEG access capital costs.” After the first paragraph in Section 6.5(c)(i), the following paragraph shall be added: “Notwithstanding the previous paragraph, in the event of a change in federal law that permits the Grantor or its Designated Access Provider to use the support set forth in this Section 6.5(c)(i) for non-capital costs without such support being treated as a franchise fee, Grantee shall, no sooner than November 1, 2013 or within sixty (60) days of the effective date of the change in law, as applicable, provide a total of two percent (2%) of its gross revenues as capital and non-capital support for PEG access through the remaining term of the Franchise.”
- G. The following paragraph shall be added at the end of Section 6.5(c)(ii) of the Franchise: “Commencing on November 1, 2014, Grantor shall cause Canby Telephone Association, a competitive cable service provider in the City, to contribute eight hundred sixty two dollars (\$862.00) per month to Grantor’s Designated Access Provider (the “DAP”) and such amount shall be paid directly to the DAP by Canby Telephone Association. It is Grantee’s intent to enter into an agreement with the DAP pursuant to which the DAP will forward to Grantee all rent contributions paid by Canby Telephone Association through March 4, 2017. Grantor and Grantee agree that this amount represents one half (1/2) of the rent for the portion of the access facility occupied by Grantor’s DAP as of June 6, 2011 (which is approximately eighty-seven

percent (87%) of the leased space, the remainder of which is used by the Grantee). In the event that the rent for the leased space changes during the term of this Agreement pursuant to the terms of a valid lease agreement between Grantee and the owner of the leased space, then Grantor shall cause Canby Telephone Association to contribute to the DAP one half (1/2) of the adjusted rental amount for the portion of the access facility occupied by the DAP. Grantor and Grantee further agree that if the DAP's proportionate use of the access facility increases or decreases by five percent (5%) or more, the payments required under this Paragraph from Canby Telephone shall be increased or decreased in proportion to the change. Grantor's obligation to require Canby Telephone Association to make the payment set forth in this paragraph shall cease if Canby Telephone Association ceases to provide cable service in the City or if the DAP stops using the access facility.

- H. Section 9.1 of the Franchise shall be deleted in its entirety and replaced with the following: "The parties shall be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Agreement diminish the rights of either Grantor or Grantee under Section 627 of the Cable Act, and any provision of the Agreement that purports to diminish such right shall be deemed superseded by the Cable Act."

Section 2. The amendments to the Franchise set forth in this Ordinance shall take effect as of June 6, 2011, provided that Wave files with the City its written acceptance of the amendments, in the form attached hereto as Exhibit A, by the effective date of this Ordinance. If Wave fails to timely file its written acceptance, this Ordinance shall be null and void and the Franchise will be of no further force or effect.

Section 3. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to ensure uninterrupted cable service, an emergency is hereby declared to exist and this Ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 5, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, October 19, 2011, commencing at the hour of 7:30 PM in the City Council Chambers located at 155 NW 2nd Avenue in Canby, Oregon.

Kimberly Scheafer, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 19th day of October, 2011, by the following vote:

YEAS _____

NAYS _____

Randy Carson
Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

EXHIBIT A

ACCEPTANCE

City Administrator
City of Canby
P.O. Box 930
Canby, Oregon 97013

The undersigned, WaveDivision VII, LLC, does hereby accept the amendments to its Franchise with the City of Canby as set forth in Ordinance No.1347, approved at first reading on October 5, 2011, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise as amended, subject to applicable federal, state and local law. This acceptance is conditioned upon passage and approval of Ordinance No. 1347 by the City of Canby at second reading on October 19, 2011.

WAVEDIVISION VII, LLC

BY: _____

TITLE: _____

DATE: _____

ORDINANCE NO. 1349

AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF CANBY AND CANBY TELEPHONE ASSOCIATION AND DECLARING AN EMERGENCY.

WHEREAS, on February 2, 2005, the City of Canby granted a twelve year cable television franchise to Canby Telephone Association, effective March 4, 2005 (the “Franchise”); and

WHEREAS, the City of Canby granted a cable television franchise to the predecessor of WaveDivision VII, LLC prior to granting the Franchise, the terms of which are nearly identical to the Franchise; and

WHEREAS, the City is considering amending the terms of its cable franchise with WaveDivision VII, LLC, and to ensure compliance with the Cable Act and the rules enacted by the Federal Communications Commission, and to maintain competitive equity between the two cable operators, the City is offering the same substantive amendments to Canby Telephone Association; and

WHEREAS, the City finds it is in the public interest to amend the Franchise as set forth in this Ordinance; now therefore,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City of Canby hereby amends the Franchise with Canby Telephone Association as follows, with all other provisions, terms and conditions of the Franchise remaining unchanged and in full force and effect except as expressly stated herein:

- A. The phrase “and continuing throughout its term,” shall be deleted from the first sentence of Section 6.5(c)(i) of the Franchise. After the first sentence of Section 6.5(c)(i), the following sentence shall be added: “No sooner than November 1, 2011, Grantee shall provide two percent (2%) of its gross revenues for PEG access capital costs. Grantee shall provide two percent (2%) of its gross revenues through October 31, 2013. Commencing on November 1, 2013 and through the remaining term of the Franchise, Grantee shall provide one-percent (1%) of its gross revenues as support for PEG access capital costs.” After the first paragraph in Section 6.5(c)(i), the following paragraph shall be added: “Notwithstanding the previous paragraph, in the event of a change in federal law that permits the Grantor or its Designated Access Provider to use the support set forth in this Section 6.5(c)(i) for non-capital costs without such support being treated as a franchise fee, Grantee shall, no sooner than November 1,

2013 or within sixty (60) days of the effective date of the change in law, as applicable, provide a total of two percent (2%) of its gross revenues as capital and non-capital support for PEG access through the remaining term of the Franchise.”

- B. Section 6.5(c)(ii) shall be deleted in its entirety and replaced with the following: “Grantee shall help financially support the studio facility by paying \$1,600 per month to the Designated Access Provider (“DAP”) through October 31, 2014. Commencing on November 1, 2014, Grantee shall contribute eight hundred sixty two dollars (\$862.00) per month to the DAP and such amount shall be paid directly to the DAP. Grantee acknowledges and agrees that the DAP will forward this amount to WaveDivision VII, LLC (“Wave”), the incumbent cable operator in the City, which is obligated in its cable franchise with the City to provide the studio facility at Wave’s cost. Grantor and Grantee agree that this amount represents one half (1/2) of the rent for the portion of the access facility occupied by Grantor’s DAP as of June 6, 2011 (which is approximately eighty-seven percent (87%) of the leased space, the remainder of which is used by Wave). In the event that the rent for the leased space changes during the term of this Agreement pursuant to the terms of a valid lease agreement between Wave and the owner of the leased space, Grantee shall contribute to the DAP one half (1/2) of the adjusted rental amount for the portion of the access facility occupied by the DAP. Grantor and Grantee further agree that if the DAP’s proportionate use of the access facility increases or decreases by five percent (5%) or more, the payments required under this paragraph shall be increased or decreased in proportion to the change. Grantee’s obligation to make the payment set forth in this paragraph shall cease if the DAP stops using the access facility. In the event Wave no longer provides cable services in the City, Grantee agrees to assume the obligations currently being funded by Wave within thirty (30) days of written notice from Grantor.”
- C. Section 9.1 shall be deleted in its entirety and replaced with the following: “The parties shall be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Agreement diminish the rights of either Grantor or Grantee under Section 627 of the Cable Act, and any provision of the Agreement that purports to diminish such right shall be deemed superseded by the Cable Act. Notwithstanding the foregoing, Grantee’s Telecommunications Services under Ordinance Number 1053 are not subject to this right of purchase.”

Section 2. Emergency declared. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to ensure uninterrupted cable service, an emergency is hereby declared to exist and this Ordinance shall therefore take effect immediately upon its enactment after final reading, provided that Canby Telephone Association files with the City its written acceptance of the amendments, in the form attached hereto as Exhibit A, by the effective date of this Ordinance. If

Canby Telephone Association fails to timely file its written acceptance, this Ordinance shall be null and void and the Franchise will be of no further force or effect.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 5, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular council meeting thereof on Wednesday, October 19, 2011, commencing at the hour of 7:30 PM in the City Council Chambers located at 155 NW 2nd Avenue in Canby, Oregon.

Kimberly Scheafer, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 19th day of October, 2011 by the following vote:

YEAS _____

Nays _____

Randy Carson
Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

EXHIBIT A

ACCEPTANCE

City Administrator
City of Canby
P.O. Box 930
Canby, Oregon 97013

The undersigned, Canby Telephone Association, does hereby accept the amendments to its Franchise with the City of Canby as set forth in Ordinance No. 1349, approved at first reading on October 5, 2011, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise as amended, subject to applicable federal, state and local law. This acceptance is conditioned upon passage and approval of Ordinance No. 1349 by the City of Canby at second reading on October 19, 2011.

CANBY TELEPHONE ASSOCIATION

BY: _____

TITLE: _____

DATE: _____

Management Team Meeting Minutes
September 19, 2011
2:00 PM
City Hall Conference Room

In attendance: Greg Ellis, Amanda Klock, Eric Laitinen, Bret Smith, Bryan Brown, Penny Hummel, Kim Scheafer and Julie Wehling.

Kim Scheafer

- Reviewed Agenda for October 5 City Council Meeting

Penny Hummel

- Celebrating banned books week at the library
- Library2Go program is now compatible with Kindles

Greg Ellis

- Notifications are being handed out to property owners regarding road street project around Wait Park
- Final bid package came in for the Police Department
- Bob Godon's retirement party is on Friday at 3 PM in the City Council Chambers
- Met with County last week regarding Building Department services

Julie Wehling

- Attended French Prairie meeting last Wednesday
- Working from home due to husband's knee replacement surgery

Bret Smith

- Working on complaints received regarding truck traffic for new Police Department
- Had a counterfeit money case last week
- Accreditation was approved last week
- 911 tax needs to be a pass through
- Working with Renate on company that is looking to build an indoor firing range

Bryan Brown

- Reviewing Building Inspection Operating Program. Will need to revise when decision is made regarding Building Department duties.
- Potter's Industries is ready for their final inspection
- Need to look at who reviews storm drains on private property
- Working with property owner on S. Elm who started building a carport without permits

Amanda Klock

- Finalizing several new hire background checks
- Met with representative from Pacific Source. Will be scheduling another flu clinic in the new few weeks.

Minutes taken by Kim Scheafer